

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT LEE McBRIDE,

Defendant-Appellant.

UNPUBLISHED

August 20, 2020

No. 349000

Muskegon Circuit Court

LC No. 18-005157-FH

Before: SHAPIRO, P.J., and SERVITTO and LETICA, JJ.

PER CURIAM.

Defendant, Robert Lee McBride, appeals his conviction of larceny of a firearm, MCL 750.357b; possession of a firearm by a person convicted of a felony (felon-in-possession), MCL 750.224f; and committing a felony while in possession of a firearm (felony-firearm), MCL 750.227b. The trial court sentenced defendant as a fourth-offense habitual offender, MCL 769.12, to 12 months to 12 years’ imprisonment for the larceny of a firearm and felon-in-possession convictions, and to a consecutive 2-year sentence for the felony-firearm conviction. On appeal, defendant’s sole argument is that his waiver of a jury trial was invalid. We affirm.

This case arises out of the theft of a handgun from a residence in Muskegon, Michigan. The resident testified that he was in his apartment with a friend and defendant on the evening in question. The friend left and the resident went to use the bathroom, leaving defendant alone in the apartment. When the resident returned from the bathroom, defendant was gone, as was a handgun that had been on the coffee table. The resident called the police the following day. Defendant denied taking the gun and indicated that there was another individual present who could have taken it. After being charged and arraigned, defendant waived his right to a jury trial and chose to proceed with a bench trial. Following a one-day bench trial, the trial court found defendant guilty of larceny of a firearm, felon-in-possession, and felony-firearm.

On appeal, defendant argues that his jury waiver was invalid, specifically because the trial court failed to inform him that a jury verdict must be unanimous. We disagree.

In this case, defendant did not object to proceeding to a bench trial and he failed to challenge the trial court’s acceptance of his jury waiver. Accordingly, this issue is not preserved

for appeal. See *People v Metamora Water Serv, Inc*, 276 Mich App 376, 382; 741 NW2d 61 (2007). Unpreserved constitutional claims are reviewed for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999). “To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights.” *Id.* at 763. “The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings.” *Id.*

“The fundamental nature of the right to a jury trial is reflected in both the federal and state constitutions.” *People v Allen*, 466 Mich 86, 90; 643 NW2d 227 (2002), citing US Const, Am VI; Const 1963, art 1, § 20. However, a criminal defendant is entitled to waive his or her right to a jury trial with the consent of both the prosecutor and the trial court. MCL 763.3(1). MCR 6.402 provides:

(A) Time of Waiver. The court may not accept a waiver of trial by jury until after the defendant has been arraigned or has waived an arraignment on the information, or, in a court where arraignment on the information has been eliminated under MCR 6.113(E), after the defendant has otherwise been provided with a copy of the information, and has been offered an opportunity to consult with a lawyer.

(B) Waiver and Record Requirements. Before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. The court must also ascertain, by addressing the defendant personally, that the defendant understands the right and that the defendant voluntarily chooses to give up that right and to be tried by the court. A verbatim record must be made of the waiver proceeding. [See also MCL 763.3(2).]

“[C]ompliance with the court rules [] creates a presumption that a defendant’s waiver was voluntary, knowing, and intelligent.” *People v Mosly*, 259 Mich App 90, 96; 672 NW2d 897 (2003).

In this case, defendant made his waiver after his arraignment. He acknowledged on the record that he consulted with his attorney before making this decision. The trial court advised defendant that he had the constitutional right to a trial by jury and that it was his choice whether to proceed with a jury trial or a bench trial. The court ensured that defendant understood that he would be giving up his constitutional right to a jury if he chose to have a bench trial. Defendant stated that he understood and that he wanted to proceed with a bench trial. Moreover, defendant signed a written waiver that was consented to by the prosecutor and approved by trial court. See MCL 763.3(1). In addition, before the bench trial began the trial court again confirmed with defendant that he wished to have a bench trial. Accordingly, the trial court properly ascertained that defendant understood his right to have a jury trial, and defendant’s waiver was voluntary, knowing, and intelligent. See *People v Shields*, 200 Mich App 554, 560-561; 504 NW2d 711 (1993) (concluding that a similar waiver was valid).

This Court has previously rejected defendant’s argument that the trial court is required to inform a defendant seeking to waive a jury trial that a jury verdict must be unanimous:

In his supplemental brief, filed after the hearing, defendant argues that the waiver [of his right to a jury trial] was invalid because the trial court did not explain to him that a jury must reach a unanimous verdict in order to convict him, while in a bench trial his fate would be decided by a single person. We disagree. Such advice is not required by case law, statute, or court rule, and the authorities upon which defendant relies are not persuasive. We hold that defendant's waiver of his right to a jury trial was made knowingly, voluntarily, and understandingly. [*People v James (After Remand)*, 192 Mich App 568, 570-571; 481 NW2d 715 (1992).]

Given the absence of any Michigan statute, court rule, or caselaw requiring trial courts to advise defendants in this context of their right to a unanimous verdict, defendant fails to establish plain error with regard to his jury trial waiver.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Deborah A. Servitto
/s/ Anica Letica